

REMARKS

This Paper is submitted in response to the Office Action mailed September 15, 2005. This Paper is filed within the three-month shortened statutory response period, namely December 15, 2005. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Claims 1-13, 15-16, 18-22, 24-26, and 28-37 are currently pending in this application. Claims 14, 17, 23, and 27 have been canceled. New claims 34-37 have been added.

The abstract was objected to for containing more than 150 words. The abstract has been amended to contain less than 150 words. Applicants respectfully submit the objection to the abstract be withdrawn.

Claims 13-14, 18 and 27 were objected to for allegedly being in improper dependent form. Claims 14, 17 and 27 have been canceled. Claims 13 and 18 have been amended to establish proper dependency. Applicants respectfully submit that the objection to claims 13-14, 18, and 27 be withdrawn.

Claim 15 was rejected under 35 U.S.C. § 112, 2nd paragraph, for allegedly lacking antecedent basis for the term “the second styrene and hydrocarbon copolymer.” Claim 15 presently establishes proper antecedence. Applicants respectfully submit that the § 112 rejection be withdrawn.

Claims 1-2, 4-9, and 15-33 were rejected under 35 U.S.C. § 102(b) for allegedly being anticipated by U.S. Patent No. 5,356,709 to Woo et al. (*Woo*). Claims 10-14 were rejected under 35 U.S.C. §103(a) for allegedly being obvious over *Woo* in view of U.S. Patent No. 5,849,843 to Laurin et al. (*Laurin*). Claim 3 was rejected under 35 U.S.C. §103(a) for allegedly being obvious over *Woo* in view of U.S. Patent No. 6,127,009 to Strassmann (*Strassmann*). Applicants respectfully disagree with and traverse these alleged rejections for the reasons set forth below.

Woo, *Laurin*, and *Strassmann*, either alone or in combination, fail to teach or suggest a non-PVC tubing having layers of four and five component blends as recited in claims 1 and 20 respectively. *Woo* has no disclosure directed to a radio frequency susceptible four component blend as recited in independent claim 1. *Woo* merely discloses a core layer having a two component—polyamide/ethylene vinyl acetate—blend. *Woo*, col. 3 lines 30-37. Moreover, *Woo* fails to disclose or suggest a five component blend as recited in claim 20. *Woo*’s tie layer contains, at most, only four components. *Woo*, col. 3 lines 38-49. As *Woo* is silent regarding 1)

a four component radio frequency susceptible layer as recited in claim 1 and 2) a five component layer as recited in claim 20, *Woo* fails to disclose or suggest the subject matter recited in the present claims.

Laurin has no disclosure whatsoever directed to a two layer structure. *Strassmann* does not teach or suggest a tubing layer with four or five component blends as recited in independent claims 1 and 20 respectively. Rather, *Strassmann* discloses a tubing that may have layers merely composed of polyethylene (PE), PE and styrene-ethylene-butene-styrene, PE and ethyl vinyl acetate (EVA), and polypropylene and EVA. *Strassmann*, col. 5 line 66 through col. 6 line 67. As *Woo* and *Strassmann* fail to disclose the recited component blends, and *Laurin* is wholly silent regarding a two layer structure, no combination of *Woo*, *Laurin* and *Strassmann* discloses or suggests the subject matter recited in the present claims.

Claims 4 and 23 were rejected under 35 U.S.C. §101 for allegedly claiming the same invention as claim 1 of U.S. Patent No. 6,652,942. Claims 1-33 were rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-26 of U.S. Patent No. 6,652,942. Claim 4, dependent on claim 1, includes all the elements of claim 1. Claim 4 therefore overcomes the alleged statutory double patenting rejection. Claim 23 has been canceled.

A terminal disclaimer with respect to U.S. Patent No. 6,652,942 accompanies this response.

CONCLUSION

In view of the foregoing remarks, Applicants submit that claims 1-13, 15-16, 18-22, 24-26 and 28-37 are in a condition for allowance and respectfully request a notice of the same.

Respectfully submitted,

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